

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT ,

v.

PARENTS ON BEHALF OF STUDENT
,

OAH Case No. 2014120052

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

OAH Case No. 201400989

ORDER GRANTING MOTION TO
AMEND COMPLAINT AND SETTING
HEARING ON BIFURCATED ISSUES

On October 22, 2014, Parents on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request in OAH Case Number 2014100989 naming Capistrano Unified School District. In his complaint, Student alleges that Capistrano denied him a free appropriate public education during school years 2010-2011, 2011-2012, and 2012-2013. Student also contended that the limitations period should not be applied as Capistrano misrepresented to Student's parents that it had resolved the problems.

On November 26, 2014, Capistrano filed with OAH a Due Process Hearing Request naming Student as respondent in OAH Case Number 2014120052, which contends that Capistrano's March 2013 assessment of Student was appropriate.

On November 3, 2014, Capistrano filed with OAH, in OAH Case Number 2014100989, a motion to bifurcate the issue as to whether Student's claims prior to October 22, 2012 were barred by the two year Statute of Limitations. On November 12, 2014, OAH granted the bifurcation motion

On November 26, 2014, OAH granted a motion by Capistrano to consolidate the Capistrano filed case with the Student filed case and designated the Capistrano filed case as the primary case.

On December 12, 2014, the parties filed a joint request to continue the scheduled Prehearing Conference of December 15, 2014 and Due Process scheduled for December 23, 2014. OAH granted the request on December 12, 2014 setting the PHC for March 3, 2015 and the Hearing for March 9-12, 2015.

On February 17, 2015, Student filed with OAH a motion to file an amended complaint in OAH case number 2014100989. Student seeks to add two issues involving an Individualized Education Program meeting which occurred on November 17, 2014. Thus, the bulk of Student's complaint continues to allege that Student was deprived of a FAPE for the 2010-2011, 2011-2012, and 2012-2013 school years.

APPLICABLE LAW AND DISCUSSION

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Here, Student knew of the potential issues involving the November 17, 2014 IEP for almost three months prior to filing the motion to file an amended complaint. Student is currently in a unilateral private placement and is seeking to be reimbursed for the costs of such placement. It appears that the delay in filing for leave to amend the complaint is for tactical purposes to receive delay in going to hearing. Student does point out that there may be some judicial economy to permitting the filing of the proposed amended complaint. Since this matter involves a bifurcated hearing, such delay may well prevent this matter being decided in a timely basis.

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order, and Student's case will now be the primary case. The bifurcated issues shall proceed to hearing as scheduled since this will not prejudice either party.

The PHC as to Statute of Limitations issues will proceed as scheduled on March 2, 2015, at 1:00 p.m., and the Due Process Hearing will commence at 1:30 p.m. on March 9, 2015 and continue through March 11, 2015.

The logistics of scheduling the non-bifurcated issues will be determined at the conclusion of the bifurcated issues hearing before the hearing is adjourned.

¹ All statutory citations are to title 20 United States Code unless otherwise indicated.

IT IS SO ORDERED.

DATE: February 23, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings